

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-13931-2016(O&M)

Date of Decision : **February 21, 2023**

RANJIT SINGH & ORS

.....Petitioners

VERSUS

STATE OF PUNJAB & ORS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. S.D.Sharma, Sr. Advocate assisted by
Mr. S.S.Salar, Advocate and
Ms. Sakshi Verma, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.
Mr. Yagyaan Ajay, Advocate for
Mr. Kawaljyot Singh, Advocate
for respondents No.4 to 6.

SURESHWAR THAKUR. J.(Oral)

1. The petitioners aggrieved from the making of echoings in Annexure P-14. In Annexure P-14, there are references, to the institution of CWPs No. 1973, 3536, 3538, 3539 of 2010 and 24018 of 2011, before this Court, and, also there are reference therein, that on the said writ petitions, the hereinafter extracted directions were passed:-

“In the meanwhile the respondents shall ensure that land belonging to Gram Panchayat, land reserved for common purposes and recorded as “Shamlat Deh” and Jumla Mustarka Malkan are not sold or transferred in any manner.

Besides this, you might have read that in another case, the Hon'ble Court has appointed a tribunal headed by Sh.Kuldip Singh, retd. Judge of Supreme Court, which

will enquire into Govt/Panchayati/Jumla Mustarka Malkan etc. lands regarding illegal distribution/sale of such lands.

Keeping in view the order of the Hon'ble Court, till further orders the sale deeds regarding the Gram Panchayat land, the land reserved for common purposes, the lands recorded as shamlat deh or Jumla Mustarka Malkan in the revenue record or which might have been recorded so at any point of time, or the land once recorded in the name of Govt., be not registered. If earlier any such sale deed is registered, then mutation be not sanctioned.

The above said directions be immediately got notified for strict compliance by the officers subordinate and under control of you.”

2. However, it is fairly stated at the bar by the learned Senior counsel appearing for the petitioners that SLP bearing No.24518/2012 as became directed against the order (Supra), as became passed by this Court in, CWPs No.1973, 3536, 3537, 3538 and 3539 of 2010, though is still pending, but he also further stated, at the bar, that the stay as was granted by the Hon'ble Supreme Court against the operation of the hereinafter extracted order rather been vacated. Therefore, believing the above made statement by the learned Senior counsel appearing for the petitioners, this Court can, thus, prima facie construe that the directions contained in the said writ petition do acquire force.

3. However, it is fairly stated at the bar by the learned Senior counsel appearing for the petitioners, that the appointment of Justice Kuldeep Singh (Retd.) Judge of the Supreme Court as Head of the Tribunal hence for making an enquiry into Govt./Panchayat/Jumla

Mustarka Malkan etc. lands regarding illegal distribution/sale of such lands rather is no longer functional.

4. However, it appears from a reading of order drawn on 9.2.2016, that, the Tribunal headed by Justice Kuldeep Singh (Retd.) had prepared, and, also submitted its report to the State Government, and, the said report is under consideration, and, is in the process of implementation.

5. The writ petitioners had earlier instituted CWP-25817 of 2014, seeking quashing of the letter dated 30.5.2012. A reading of the operative part of the verdict, as drawn in the said writ petition by this Court, and, which becomes extracted hereinafter, imminently discloses that this Court had without expressing any views on the merits of the said writ petition, had proceeded to dispose of the petition (Supra) with a direction to the State Government, to consider the petition as a representation of the petitioners, and, also made a further direction qua consideration of their claims but keeping in view all the relevant factors. It is fairly stated at the bar, by the learned counsel appearing for the contesting litigants, that the above consideration order, as became made on petition (Supra) rather has remained unchallenged. Therefore, the consideration order, as became passed by this Court on petition (Supra), thus acquires fullest binding force:-

“The core question that arises for consideration is whether the impugned Instructions have been issued by the State Government solely on the basis of the directions issued by this Court or was there any conscious decision taken by the authorities to restrict

registration of sale deed in respect of different categories of land?

In our considered view, the source from where the instructions originated can firstly examine whether it would be in the public interest to lift the moratorium and allow registration of sale deed. The second aspect to be considered is whether the Government is required to re-visit its policy decision during the period when the SLP is still pending before the Hon'ble Supreme Court. We thus do not express any views on merit and dispose of the writ petition at this stage with a direction to the State Government to treat this writ petition as representation on behalf of the petitioners and consider their claim keeping in view all the relevant factors.

Let an appropriate decision be taken within a period of *four months* from the date of receipt of a certified copy of this order.

Ordered accordingly. ***Dasti.***”

6. Now the question which is to be determined by this Court, is whether, the conclusions drawn in Annexure P-16 by the Financial Commissioner, Revenue, Punjab are to be validated by this Court, especially when the learned Senior counsel appearing for the petitioners has made a vehement submission, before this Court, that the drawing of Annexure P-16 by the Financial Commissioner, Revenue Punjab concerned, suffers from the vice of his lacking an able jurisdiction to draw it. The said argument is premised on the ground, that since the consideration order, as became passed by this Court, on the petition (Supra), upon the authority concerned, but would be an able order hence

with an immense jurisdictional capacity or vigour but only it was made by the authority contemplated under Sections 7 and 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '**the Act**'). However, when the author of Annexure P-16 did not fall within the domain, of the said statutorily contemplated authority. Therefore, the learned Senior counsel appearing for the petitioners argues, that the decision drawn/enclosed in Annexure P-16, and, as became drawn by the rather jurisdictionally incompetent Financial Commissioner, Revenue, Punjab is but ridden with a vice of *coram non judice*, and, or the jurisdiction as became exercised by the above after the making of a consideration order by this Court on writ petition (Supra) is but an exercise of jurisdiction thereons, hence with a material illegality and gross impropriety, and, is also so exercised beyond the ambit of an able jurisdiction, which is contrarily vested only in the therein designated statutory authorities, inasmuch as, in the authorities contemplated under the Act. The above made argument appeals to the judicial conscience of this Court, as the consideration order, as became made by this Court in writ petition(Supra), though was made with a direction to the respondent concerned, to decide the writ petition as a representation. However, the above order, but did not empower, the Financial Commissioner concerned, to yet proceed to draw the conclusions adversial to the petitioners, and, as becomes carried in Annexure P-16. The reason for making the above conclusion, is but simple, in as much as, since the petitioners raised a question of title with respect to theirs possessing a valid title qua the petition land(s)

concerned, and, as such when a dispute with respect to the validity of the said assertions of title by the petitioners qua the petition land(s) rather was required to be rested by the jurisdictionally competent authority, as contemplated in “the Act”. Therefore, this Court is of the firm view, that the jurisdiction as became exercised by the Financial Commissioner concerned, was not founded upon any valid jurisdictional premise being vested in him under “the Act”, whereas, the said jurisdiction was to be exercised only by the contemplated thereins authority(ies).

7. In view of the above, the impugned letter dated 30.5.2012 (Annexure P-14) and impugned order dated 9.2.2016 (Annexure P-16) are quashed and the writ petition is accordingly disposed of.

8. However, liberty is reserved to all concerned, to make a motion either under Sections 7 or 11 of the Act hence before the learned Collector concerned. On such motions being made before the learned Collector concerned, the latter shall but after an adequate opportunity of hearing being assigned to all the affected persons concerned, hence make a decision within six months of their preferment(s).

9. However, the sale-deeds concerned, which have already been executed in respect of the petition land(s) may also become challengeable either through a civil suit being filed by the aggrieved before the Civil Court concerned or also can be challenged in a petition cast under Section 11 of the Act but subject to, in the above motions, the vendees concerned, being arrayed thereins as party defendant or respondent. In the above event, it will be open for all the bonafide purchasers for value but without notice, to raise the plea of theirs becoming capacitated to

defend their respective titles, through theirs recourising the mandate, as carried in Section 41 of the Transfer of Property Act.

(SURESHWAR THAKUR)
JUDGE

February 21, 2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No